

REMARKS

Applicants have amended claim 1 simply to clarify its language and provide punctuation and have amended claim 4 to correct an error in the previous amendment. The amendment to claim 1 is supported by the English-language specification starting at page 1, line 26, where applicants explain that the securing plate is a separate part that is not connected to either of the cover plates. As a result, the securing plate can assume an attitude corresponding to the position and shape of the ventral surface of the vertebral body without regard to the position or attitude of either cover plate.

Claim 7 had been canceled by Examiner's amendment upon the prior allowance of this application; applicants do not represent it in this application. Applicants add claims 8 and 9 to round out their scope of protection; claims 8 and 9 find support at page 4, lines 1-22, of the specification..

Claims 1, 2, 4 and 6 stand rejected as anticipated by Ferree. The Examiner identifies Ferree's barrier plate 106 as corresponding to the claimed securing plate and asserts that the embodiment of Ferree's FIG. 10 shows the limit stop of claim 2. This rejection is respectfully traversed.

Ferree's barrier plate 106 is connected to one of the cover plates through linkage 104, as can be seen from Ferree's FIGS. 1, 2A and 2B and their legends. As explained next to FIGS. 2A and 2B, the "link member can piston back & forth through the barrier plate." Ferree's structure depends for its action and utility on the existence of the linkage 104, which applicants' claims exclude. Thus, although Ferree's barrier plate 106 may be separate from the cover plates, it is connected to one of them through linkage 104, contrary to the language of claim 1. Given the significance of the linkage to Ferree's structure, persons of ordinary skill in the art would have had no motivation to destroy the utility of Ferree's device as disclosed by eliminating the linkage. Furthermore, Ferree's structure has the disadvantage compared with the invention of having to be implanted in an assembled state, thus impairing the surgeon's ability to position the

securing plate freely. The claimed invention avoids this disadvantage of Ferree since the securing plate is separate from and not connected to either of the cover plates.

With respect to claim 2, applicants observe that FIG. 10 of Ferree does not disclose a limit stop on one of the cover plates as claimed. Ferree does not explain what the structure denoted with reference numeral 1002 might be; by comparison with FIG. 11, the most that can be said is that structure 1002 is some kind of flexible member and is certainly not a limit stop.

Accordingly, the rejection of claims 1, 2, 4 and 6 as anticipated by Ferree should be withdrawn.

Claim 3 stands rejected under 35 USC 103(a) on Ferree in view of Van Hoeck. Since Ferree does not provide the disclosures for which it is cited, this rejection should be withdrawn. Applicants also note that the securing plate of Van Hoeck is the antithesis of the claimed securing plate in that it is fastened to both cover plates. No person of ordinary skill in the art would have been motivated to look to Van Hoeck to solve any problem with securing plates that are not connected to the cover plates. Finally, by responding substantively to the Examiner's application of Van Hoeck as prior art, applicants are not conceding that Van Hoeck is prior art. Van Hoeck is available as prior art only if its claims as published are supported in both its parent and grandparent applications; the published Van Hoeck application is a CIP of a CIP, so it is quite possible that Van Hoeck is available as prior art under 35 USC 102(e) only as of April 1, 2004, precisely one year after the U.S. filing date of this application.

Early action allowing claims 1-4, 6, 8 and 9 in this application is solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. **246472006600**.

Respectfully submitted,

By: 
Barry E. Bretschneider
Registration No. 28,055

Dated: December 28, 2005

Morrison & Foerster LLP
1650 Tysons Boulevard
Suite 300
McLean, Virginia 22102
Telephone: (703) 760-7743
Facsimile: (703) 760-7777